

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Docket HWCA 2005 0737

TSM Recovery & Recycling Co.
3422 W. Pico Boulevard
Los Angeles, California 90019

CONSENT ORDER

EPA ID CAD 108040858

Health and Safety Code
Section 25187

Respondent

The State Department of Toxic Substances Control (Department) and TSM Recovery and Recycling Company (Respondent) enter into this Consent Order and agree as follows:

1. Respondent transports hazardous waste at 3422 West Pico Boulevard, Los Angeles, California 90019 (Site).
2. The Department inspected the Site on October 21, 2004 and November 3, 2004.
3. The Department alleges the following violations:
 - 3.1. Respondent violated Health and Safety Code section 25201, subdivision (a), in that on January 30, 2004 through November 20, 2004, Respondent stored hazardous waste in excess of the ten (10) days allowed under the transfer exemption without a permit or grant authorization from the Department.
4. The parties wish to avoid the expense of litigation and to ensure prompt compliance.
5. Jurisdiction exists pursuant to Health and Safety Code section 25187.
6. Respondent waives any right to a hearing in this matter.
7. This Consent Order shall constitute full settlement of the violations alleged

above, but does not limit the Department from taking appropriate enforcement action concerning other violations.

8. The Respondent admits the violation above.

SCHEDULE FOR COMPLIANCE

9. The Respondent shall comply with the following:

9.1. Respondent has corrected the violation cited above. Respondent shall operate hereafter in a manner that shall prevent recurrences of the violation cited herein.

9.2. Submittals: All submittals from Respondent pursuant to, this Consent Order shall be sent to:

Roberto Kou, Unit Chief
Statewide Compliance Division
Department of Toxic Substances Control
1011 Grandview Avenue
Glendale, California 91201

10. Communications: All approvals and decisions of the Department made regarding such submittals and notifications shall be communicated to Respondent in writing by a Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of its obligation to obtain such formal approvals as may be required.

10.1. Department Review and Approval: If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Consent Order fails to comply with the Order or fails to protect public health or safety or the environment, the Department may return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department a revised document incorporating the recommended changes.

10.2. Compliance with Applicable Laws: Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

1 10.3. Endangerment during Implementation: In the event that the
2 Department determines that any circumstances or activity (whether or not pursued in
3 compliance with this Consent Order) are creating an imminent or substantial
4 endangerment to the health or welfare of people on the site or in the surrounding area
5 or to the environment, the Department may order Respondent to stop further
6 implementation for such period of time as needed to abate the endangerment. Any
7 deadline in this Consent Order directly affected by a Stop Work Order under this section
8 shall be extended for the term of such Stop Work Order.

9 10.4. Liability: Nothing in this Consent Order shall constitute or be
10 construed as a satisfaction or release from liability for any conditions or claims arising
11 as a result of past, current, or future operations of Respondent, except as provided in
12 this Consent Order. Notwithstanding compliance with the terms of this Consent Order,
13 Respondent may be required to take further actions as are necessary to protect public
14 health or welfare or the environment.

15 10.5. Site Access: Access to the Site shall be provided at all reasonable
16 times to employees, contractors, and consultants of the Department, and any agency
17 having jurisdiction. Nothing in this Consent Order is intended to limit in any way the
18 right of entry or inspection that any agency may otherwise have by operation of any law.
19 The Department and its authorized representatives may enter and move freely about all
20 property at the Site at all reasonable times for purposes including but not limited to:
21 inspecting records, operating logs, and contracts relating to the Site; reviewing the
22 progress of Respondent in carrying out the terms of this Consent Order; and conducting
23 such tests as the Department may deem necessary. Respondent shall permit such
24 persons to inspect and copy all records, documents, and other writings, including all
25 sampling and monitoring data, in any way pertaining to work undertaken pursuant to this
26 Consent Order.

27 10.6. Sampling, Data, and Document Availability: Respondent shall
28 permit the Department and its authorized representatives to inspect and copy all
sampling, testing, monitoring, and other data generated by Respondent or on

Respondent's behalf in any way pertaining to work undertaken pursuant to this Consent Order. Respondent shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Consent Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Consent Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Consent Order. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondent shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Consent Order.

10.7. Government Liabilities: The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties specified in paragraph 12.2, in carrying out activities pursuant to this Consent Order, nor shall the State of California be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Consent Order.

10.8. Incorporation of Plans and Reports: All plans, schedules, and reports that require Department approval and are submitted by Respondent pursuant to this Consent Order are incorporated in this Consent Order upon approval by the Department.

10.9. Extension Requests: If Respondent is unable to perform any activity or submit any document within the time required under this Consent Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

10.10. Extension Approvals: If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

PAYMENTS

11. Respondent shall pay the Department a total of \$13,000 in penalties. The payments shall be paid in one (1) installments of \$5,000 and eight (8) quarterly installments of \$1,000. The first installment in the amount of \$5,000 is due and payable on February 1, 2006. The eight (8) quarterly installments of \$1,000 each are due and payable as follows: on May 1, 2006; August 1, 2006; November 1, 2006; February 1, 2007; May 1, 2007; August 1, 2007; November 1, 2007; and February 1, 2008. Any installment payment that is received by the Department more than 15 days after it is due will be subject to a \$250 penalty. Such penalty shall be paid by Respondent no later than the due date of the next installment payment. If Respondent is late in making two (2) or more payments, or fails to make a full installment payment within thirty (30) days of its due date, then the Department, at its option, may declare the entire balance of the outstanding penalty due and owing. If Respondent fails to make any payment timely as provided above, Respondent agrees to pay interest thereon at the rate established pursuant to Health and Safety Code section 253600.1. Respondent further agrees to pay all costs and attorney's fees incurred by the Department in pursuing the collection of any sums the payment of which becomes delinquent hereunder. Respondent's checks shall be made payable to Department Of Toxic Substances Control, and shall be delivered together with the attached Payment Voucher to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st floor
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent to:

Roberto Kou, Unit Chief
Statewide Compliance Division
Department of Toxic Substances Control
1011 Grandview Avenue
Glendale, California 91201

1 OTHER PROVISIONS

2 12. Additional Enforcement Actions: By agreeing to this Consent Order, the
3 Department does not waive the right to take further enforcement actions, except to the
4 extent provided in this Consent Order.

5 12.1. Penalties for Noncompliance: Failure to comply with the terms of
6 this Consent Order may subject Respondent to civil penalties and/or punitive damages
7 for any costs incurred by the Department or other government agencies as a result of
8 such failure, as provided by Health and Safety Code section 25188 and other applicable
9 provisions of law.

10 12.2. Parties Bound: This Consent Order shall apply to and be binding
11 upon Respondent and its officers, directors, agents, receivers, trustees, employees,
12 contractors, consultants, successors, and assignees, including but not limited to
13 individuals, partners, and subsidiary and parent corporations, and upon the Department
14 and any successor agency that may have responsibility for and jurisdiction over the
15 subject matter of this Consent Order.

16 12.3. Effective Date: The effective date of this Consent Order is the date
17 it is signed by the Department.

18 12.4. Integration: This agreement constitutes the entire agreement
19 between the parties and may not be amended, supplemented, or modified, except as
20 provided in this agreement.

21 12.5. Compliance with Waste Discharge Requirements: Respondent
22 shall comply with all applicable waste discharge requirements issued by the State Water
23 Resources Control Board or a California regional water quality control board.

24
25 Dated: October 25, 2005

Original signed by Steve Mitsunaga, VP, TSM
Respondent

26
27 Dated: October 25, 2005

Original signed by Robert Kou
Department of Toxic Substances Control